

A RESOLUTION BY

**COUNCILMEMBER CLAIR MULLER AS SUBSTITUTED BY
CITY UTILITIES COMMITTEE**

A RESOLUTION TO AUTHORIZE PAYMENT OF STIPULATED PENALTIES IMPOSED BY THE ENVIRONMENTAL PROTECTION AGENCY (EPA) AND THE ENVIRONMENTAL PROTECTION DIVISION OF THE DEPARTMENT OF NATURAL RESOURCES OF THE STATE OF GEORGIA (EPD) IN THE AMOUNT OF ONE HUNDRED THOUSAND DOLLARS AND 00/100 (\$100,000.00) AS STIPULATED PENALTIES FOR THE VIOLATION OF THE FIRST AMENDED CONSENT DECREE OCCURRING AT THE INDIAN CREEK SEWER RELIEF PROJECT, CIVIL ACTION FILE NO. 1:98-CV-1956-TWT; TO IDENTIFY THE SOURCE OF FUNDING; AND FOR OTHER PURPOSES.

WHEREAS, the City has experienced a violation of First Amended Consent Decree as set out in Exhibit "A" hereto; and

WHEREAS, this violation is subject to stipulated penalties imposed at the discretion of the Environmental Protection Agency (EPA) and the Environmental Protection Division of the Department of Natural Resources of the State of Georgia (EPD) pursuant to the SSO Consent Decree, Civil Action File No. 1:98-CV-1956-TWT Paragraphs XI.K; and

WHEREAS, the Department of Watershed Management of the City does not dispute the fact this violation of SSO Consent Decree did occur; and

WHEREAS, the payment to EPA and EPD of this assessment by the City does not constitute a finding or adjudication, is not to be evidence of a violation of state or federal laws by the City, nor does the City by its consent agree to any violations of state or federal laws or admit any liability to any third party or parties; and

WHEREAS, funds for this purpose are available in account number 2J01 529017 Q31001; and

WHEREAS, the SSO Consent Decree similarly provides for payment of interest on late payment of stipulated penalties; and

WHEREAS, it is deemed to be in the interest of the City to accept the proposed stipulated penalties and to pay the incident assessments to them.

NOW, THEREFORE, BE AND IT IS RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, as follows:

Section One: That the Chief Financial Officer of the City is authorized to issue checks in the amounts of Fifty Thousand Dollars and 00/100 (\$50,000.00) payable to the **State of Georgia** and Fifty Thousand Dollars and 00/100 (\$50,000.00) payable to the **Treasurer, United States of America** as stipulated penalties imposed pursuant to the CSO Consent Decree at the discretion of the Environmental Protection Agency and the Environmental Protection Division of the Department of Natural Resources of the State of Georgia; and

Section Two: That the said payments be chargeable to Account Number 2J01 529017 Q31001.

Georgia Department of Natural Resources

Environmental Protection Division, Water Protection Branch
4220 International Parkway, Suite 101, Atlanta, Georgia 30354

Alan W. Hallum, Branch Chief

404/675-6232

FAX: 404/675-6247

October 22, 2003

Mr. Jack E. Ravan, Commissioner
Department of Watershed Management
City of Atlanta
Suite 5400, City Hall South
55 Trinity Avenue SW
Atlanta, GA 30335-3029

RE: Proposed Consent Order (Order)

Dear Commissioner Ravan:

On August 14, 2003, representatives from the Georgia Environmental Protection Division (EPD) investigated a complaint concerning a piped discharge, which was causing stream bank erosion along Peachtree Creek near the City's R.M. Clayton Water Reclamation Center (WRC). During EPD's investigation of this complaint, EPD representatives did document that a discharge of process water was occurring to Peachtree Creek from a pond system used to settle tunnel water from boring activities associated with the Nancy Creek Tunnel Project. Significant stream bank erosion was also noted at the discharge site.

On August 21, 2003, EPD issued a Notice of Violation for the Nancy Creek Tunnel unpermitted discharge occurring at the WRC requiring the City to submit a plan of action to cease the discharge and restore the stream bank. The City responded in a letter dated September 5, 2003 that the discharge will be diverted from Peachtree Creek to the headworks of the R.M. Clayton WRC and stream bank restoration will be completed within 90 days of the discharge diversion. EPD has since verified that the discharge was diverted from Peachtree Creek. In addition, the City states that boring activities at the Roswell Road construction shaft site will require periodic discharge of groundwater to States Waters.

For the discharge at the Roswell Road construction shaft site, the City proposes extending the pipe further out from the stream bank and reinforcing the stream bank adjacent to the pipe. The City will need to monitor the discharge and ensure that water quality is protected.

The unpermitted discharge and erosion of the stream bank are violations of the Georgia Rules and Regulations for Water Quality Control (Rules). In order to address the Rules violations, we are proposing a Consent Order (Order) containing the following conditions:

1. Submit a monetary settlement of \$10,000.00.

EXHIBIT A

Commissioner Jack E. Ravan

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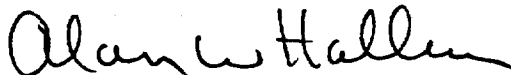
2. Submit a plan and schedule for the completion of the stream bank restoration along Peachtree Creek.
3. Provide for review a basis of design to EPD's Engineering and Technical Support Program for the settling ponds at the Roswell Road construction site.
4. During a discharge, monitor the discharge and upstream and downstream of the discharge point for flow, temperature, dissolved oxygen, pH, and turbidity. All test results and flow data are to be submitted to EPD on the fifteenth day of the month following the one-month sampling period.
5. Submit a written report to EPD confirming when the Roswell Road tunnel boring activities are completed and that there is no further discharge to Nancy Creek.

Please sign the attached Order and return it to our office by November 21, 2003. Please date the Order under the signature line for the City, but do not place a date in the lines above the Assistant Director's signature, as they will be filled in when the Order is executed.

In accordance with Chapter 391-1-3 of the Public Participation in Enforcement of Environmental Statutes Rule, EPD plans to issue a public notice on this order once the order has been signed and returned by the City. After consideration of any comments received during the 30-day comment period, EPD will present to the City an executed order or an order with modifications based upon comments received pursuant to the public notice. In the event that no changes are made to the proposed order previously forwarded to the City, the City will be responsible for paying the settlement amount in accordance with Condition No. 1 of the order. Payment should be in the form of check made payable to the Georgia Department of Natural Resources.

Your cooperation in this matter is appreciated.

Sincerely,



Alan W. Hallum, Chief
Water Protection Branch

AWH/elw

Enclosure

EXHIBIT A

ENVIRONMENTAL PROTECTION DIVISION
OF THE
DEPARTMENT OF NATURAL RESOURCES
STATE OF GEORGIA

IN RE: City of Atlanta
Nancy Creek Tunnel Project

ORDER NO. EPD-WQ-

CONSENT ORDER

WHEREAS, on August 14, 2003, representatives from the Georgia Environmental Protection Division (EPD) investigated a complaint of a piped discharge causing bank erosion along Peachtree Creek at the City of Atlanta's (City) Nancy Creek Tunnel Project (Project) site at the R. M. Clayton Water Reclamation Center (WRC); and

WHEREAS, during EPD's investigation of this complaint, EPD documented a piped discharge of process water occurring to Peachtree Creek from the settling ponds associated with the construction for the Project; and

WHEREAS, on August 21, 2003, EPD issued a Notice of Violation to the City that required a formal plan of action for eliminating the discharge to Peachtree Creek, for the stream bank restoration, and for handling tunnel water at other construction sites associated with the Project; and

WHEREAS, in a letter dated September 5, 2003, the City stated the discharge to Peachtree Creek would be eliminated by September 17, 2003; and

WHEREAS, on October 20, 2003, EPD verified the discharge to Peachtree Creek was rerouted to the headworks of the R. M. Clayton WRC; and

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WHEREAS, the City's letter of September 5, 2003 also stated that stream bank restoration would be completed within 90 days of the discharge being redirected; and

WHEREAS, according to the City, the City's collection and transmission system is flowing near capacity in dry weather conditions near the Roswell Road Project construction shaft site; and

WHEREAS, tunnel boring activities will be conducted at the Roswell Road Project construction shaft site; and

WHEREAS, the City's September 5, 2003 letter requests authorization from EPD to discharge groundwater from the tunnel construction to Nancy Creek at the Roswell Road Project construction shaft site, until tunnel boring activities are completed; and

WHEREAS, Chapter 391-3-6-.03(5)(c) of the Georgia Rules and Regulations for Water Quality Control states that all waters shall be free from material related to municipal, industrial or other discharges, which produce turbidity, color, odor or other objectionable conditions which interfere with legitimate water uses; and

WHEREAS, Section 12-5-29(a) of the Official Code of Georgia Annotated (Code) makes it unlawful to use any waters of the State to dispose of sewage or other wastes, except to comply with the Code and all rules, regulations, orders, and Permits established under the Code; and

WHEREAS, the City will be allowed to discharge at the Roswell Road Project construction site only, provided it complies with the provisions of this Order.

NOW, THEREFORE, the Director ORDERS and the CITY AGREES as follows:

1. Submit to the Georgia Department of Natural Resources within thirty days from the effective date of the Order, a monetary settlement of \$10,000.00 for the

EXHIBIT A

pipelined discharge of process water to Peachtree Creek and the stream bank erosion.

2. Within 30 days of the execution date of this Order, submit to EPD a plan with a completion date for stream bank restoration along Peachtree Creek. Submit written notification to EPD upon the completion of the stream bank restoration.
3. Within 30 days of the effective date of this Order, provide for review a basis of design to EPD's Engineering and Technical Support Program for the settling ponds at the Roswell Road Project construction site. Included in the design should be the location of the discharge pipe to State Waters.
4. Upon the effective date of the Order, during the discharge, monitor the discharge from the Roswell Road Project construction site for the following parameters at the frequencies, types, and locations indicated:

Parameter	Effluent Discharge Limitations	Monitoring Requirements		
		Measurement Frequency	Sample Type	Sample Location
Flow	--	Daily	Continuous Recording	Effluent
Temperature	*	Daily	Grab	Effluent, upstream and downstream of discharge
Dissolved Oxygen	*	Daily	Grab	Effluent, upstream and downstream of discharge
pH	*	Daily	Grab	Effluent, upstream and downstream of discharge
Turbidity	75 NTU	Daily	Grab	Effluent, upstream and downstream of discharge

*The discharge is to comply with all applicable water quality standards.

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The analytical procedures, sample containers, sample preservation techniques, and sample holding times for the monitoring required must be consistent with the techniques and procedures listed in the Federal Code of Regulations, Title 40, Part 136. The discharge of hazardous substances or oil from the site is prohibited. Should the discharge violate any Water Quality Standards and/or effluent limits, the discharge to Nancy Creek will immediately be terminated and the City will notify EPD for further action. All test results and flow data are to be submitted to EPD on the 15th day of the month following the one-calendar month sampling period along with the City's Discharge Monitoring Reports. Test results required under this condition must be sent to:

Georgia Environmental Protection Division
Permitting Compliance and Enforcement Program
4220 International Parkway, Suite 101
Atlanta, Georgia 30354

All reports, certification statements, or other information requested by EPD shall be signed by a principal executive officer, elected official, or other authorized representative.

5. Within ten days of completion of tunnel boring activities at the Roswell Road Project construction site, submit a written report to EPD confirming the tunnel boring activities are completed, that there is no further discharge to Nancy Creek, documenting the time the discharge ended.

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This Order does not imply that EPD will not take enforcement action, if the City fails to (1) fully satisfy the conditions of this Order, or (2) fully comply with other relevant requirements.

This Order is final and effective immediately, and shall not be appealable, and the City waives any hearing on its terms and conditions.

It is so ORDERED, CONSENTED, and AGREED to this _____ day of _____, 2003.

FOR THE DIVISION:

DAVID M. WORD
Assistant Director

FOR THE CITY OF ATLANTA:

BY: _____
TITLE: _____
DATE: _____